

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED  
IN CLERKS OFFICE

No. 04-CR-00054-10287-NLG

2004 OCT -1 P 4:34

U.S. DISTRICT COURT  
DISTRICT OF MASS.

UNITED STATES

v.

ADISON BAPTISTA MATHIAS,  
Defendant.

**DEFENDANT'S MOTION TO WAIVE PREPARATION OF  
PRESENTENCE REPORT AND PROCEED IMMEDIATELY TO SENTENCING**

Pursuant to Rule 32(c)(1)(A)(ii) of the Federal Rules of Criminal Procedure, the defendant Adison Baptista Mathias, moves that the Court dispense with the requirement that a presentence on the grounds that the information in the record enables the Court to meaningfully exercise its sentencing authority under 18 USC §3553. See also USSG §6A1.1.

In support of this motion, counsel says as follows:

1. The defendant was arrested on August 31, 2004 by agents from Immigration and Customs Enforcement and has been in custody since. He was charged in a criminal complaint with (1) reentering the United States without the required permission after having previously been removed; and (2) using a social security number that was obtained with false information in order to obtain a Massachusetts driver's license.

2. The Government has offered to accept Mr. Mathias' plea to the offenses charged for "time served" and release to ICE custody under the standing detainer. As the docket

entries for September 14 indicate, counsel has said on record that Mr. Baptista has made an informed decision to plead guilty and wishes to accept the government's offer.

3. Based on his review of discovery provided and reviewed with the defendant and Portuguese interpreter, counsel believes that Immigration authorities have a wealth of information about Mr. Baptista sufficient for this Court to proceed to sentencing without a PSR. Mr. Baptista has two previous apprehensions for illegal entry into the United States in 1997 at Los Angeles and New York. In each case, Mr. Mathias cooperated with authorities and submitted to NS interrogation. The defendant's III and CORI indicate a conviction for motor vehicle misdemeanor and no other convictions.

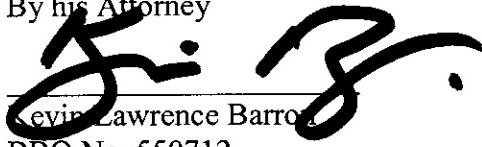
4. Small and frail, Mr. Baptista needs to be released. He reports he entered this country to earn money and send home to family. Most recently, he was a dishwasher and at times he has been employed as a roofer. Now aged 53, Mr. Baptista has never served a sentence of imprisonment. He is now in general population in a Massachusetts facility.

5. The defendant is charged with violating 8 U.S.C. § 1326(a) and 42 U.S.C. § 408(a)(7)(A). The maximum punishments are 2 and 5 years respectively. Under U.S.S.G. §2L1.2 and USSC 2B1.1, the higher base offense level is 8 with an upward adjustment of 2 for a previous illegal re-entry and a two-point reduction for acceptance of responsibility. Application note 2 groups the two offenses producing a guideline sentencing range of 0 to 6 months.

6. Mr. Baptista's case is one in which this Court may exercise its discretion in clear conscience to waive a PSR. There is no dispute over sentence and the Defense is accepting the Government's version of the offense as set forth in discovery. Counsel believes that the Defense and the Government believe Mr. Mathias poses no serious

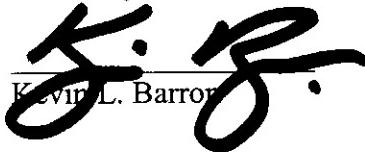
threat to the safety or well being of any community. All that the Defense asks in the circumstances is that Mr. Mathias will then be taken into immigration custody and deported to Brazil.

Respectfully submitted  
Adison Baptista Mathias, Defendant  
By his Attorney

  
Kevin Lawrence Barro  
BBO No. 550712  
453 Washington Street 5B  
Boston, MA 02111  
p 617-482-6368  
m 617-407-6837  
f 617-517-7711

**Certificate of Service**

I certify that I have served the foregoing upon Assistant U.S. Attorney Tom Kanwit and Deputy Probation Officer Josh Ulrich by hand delivery on October 1, 2004.

  
Kevin L. Barro